IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2499 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BS MODI & ORS
Versus
DL BHATT

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Appearance :
PARTY-IN-PERSON for Appellants
MR KV SHELAT for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 24/02/2006

CAV JUDGMENT

1 This Appeal is preferred by judgment creditor of Execution Application No. 473 of 1980 of the Court of City Civil Judge at Ahmedabad and Civil Misc. Application No. 293 of 1987 which came to be filed in the said

Execution Application by present appellant to remove obstructions. The said application to remove obstructions of present appellant i.e. original judgment creditor came to be rejected by learned City Civil Judge, Court No.5, Ahmedabad, on 21st of July, 1994 and hence this Appeal.

2 Brief facts for the purpose of this Appeal can be depicted as under :

2.1 One Dahyagar Hiragar preferred a Civil Suit No. 66 of 1963 against defendants including present appellant for declaration of title and possession of property. The property, subject matter of appeal, consists part and parcel of the said properties mentioned in Civil Suit No. 66 of 1963. The said Civil Suit No. 66 of 1963 was decreed in favour of Dahyagar Hiragar on 30th of November, 1967. Appeal being First Appeal No. 621 of 1967 came to be preferred against the said judgment and order which was dismissed on 13th of April, 1973. It appears that Special Leave Petition was also preferred before the Supreme Court, but the same was also dismissed and decree for declaration and possession of the suit property was, therefore, became final in favour of plaintiff Dahygar

Hiragar. The property in question is popularly known as ? Bawana Dehla? and is situated at Sarangpur, Ahmedabad, bearing City C.No. 24639 of Khadia Ward No.3, City of Ahmedabad and M.C. No. 1465/8. Undoubtedly, this premises is a residential premises and is subject matter of this Appeal. The present appellant entered into an agreement to sell on 29.4.1964 with Dahyagar Hiragar in respect of the suit property known as ?Bawana dehla?. There was a term in the agreement that a sale deed shall be executed by Dahyagar either in favour of the present appellant or whoever be nominated by the present appellant. In pursuance of this agreement to sell, Dahyagar executed the sale deed on 3rd of December, 1973 in favour of Bai Laxmiben, wife of appellant and in the joint name of son of appellant as well as in the name of the present appellant, who also was one of the joint purchasers. Vide this sale deed, the property in question was fully conveyed to the purchaser. In the meanwhile daughter of Dahyagar, named as Bai Jotsna, preferred Civil Suit No. 3255 of 1974 in the City Civil Court at Ahmedabad against Dahyagar and present appellant and claimed a decree of declaration in respect of ownership of the property in question through Will alleged to have been propounded by Bai Jadavben, mother of Dahyagar Hiragar. In the said

Suit, the City Civil Court appointed officer of the Court to be Commissioner to take accounts in respect of suit property which came to be challenged by the present appellant before the High Court of Gujarat vide Appeal From Order No. 355 of 1977 and in the said Appeal From Order, this Court appointed present appellant Bachubhai as receiver of the suit property instead of officer of the court as appointed by the Court of City Civil Judge. The order of Appeal From Order is dated 19th of December, 1977.

2.2 Dahyagar Hiragar, plaintiff of Civil Suit No. 66 of 1963, preferred an Execution Application to execute the decree passed in his favour in Civil Suit No. 66 of 1963. The said Execution Application was withdrawn. Thereafter present appellant with the permission of the court in the capacity of receiver and as above said in the capacity of purchaser of property preferred above said Execution Application No. 473 of 1980 to execute the decree passed in favour of Dahyagar Hiragar in Civil Suit No. 66 of 1963. In the said Execution Application No. 473 of 1980, vide amendment, present appellant mentioned description of boundaries in respect of the property in question and obtained possession warrant against present respondent

Dhirajlal Laxmishankar Bhatt stating that the present respondent was in occupation of part of premises bearing Municipal Cession No. 1465/8 through defendants of Civil Suit No. 66 of 1963 and decree for possession was required to be executed against the present opponent.

2.3 The present respondent Dhirajlal Laxmishankar Bhatt filed obstruction application at Exh. 155 and thereupon the present appellant Modi Bachubhai Sankalchand preferred a Civil Misc. Application No. 293 of 1987 in the said Execution Application No. 473 of 1980 to remove the obstructions and for the execution of the possession warrant.

2.4 The present respondent raised obstructions to the execution warrant as well as resisted Civil Misc. Application No. 293 of 1987 by filing written statement at Exh. 11 and contended that no notice of Execution Application No. 473 of 1980 was ever served upon him and the said application for removal of the obstructions was filed by the present appellant in suppression of material facts and by misrepresentation of facts. The respondent contended that he was in lawful occupation of the said property as tenant of original owner Dahyagar Hiragar

since 1941. It is contended that not only the original owner Dahyagar Hiragar but the present appellant as well issued the receipts of rent which he produced on record to indicate that he was tenant in the suit premises and no decree be executed against him. It was stated that the appellant was doing all the legal work of Dahyagar Hiragar and was his executor. The premises in question was rented to him for monthly rent of Rs. 12 + Rs. 3.50 towards electric charges from 1968-69. Thereafter, in 1974 to 1978, the rent was recovered at the rate of 30 from him and present appellant issued receipts signed by his wife Laxmiben as owner. In the year 1978-79, the present appellant accepted the rent as receiver at the rate of Rs. 30/- per month. After 1986, the appellant refused to accept the rent. It is contended that neither he was defendant of Civil Suit No. 66 of 1963 nor he was in possession of the suit premises through any of the defendants of Civil Suit No. 66 of 1963. He contended that the possession of the suit property had been held by him independently as tenant and, therefore, the decree passed in Civil Suit No. 66 of 1963 cannot be executed against him by the appellant.

3 From the above contentions of the parties, learned City

Civil Judge framed following issues at Exhibit ? 35 :

(1) Whether the decree holder proves that obstructionist is in possession of the property bearing M.C.No. 1465/8 on behalf of the judgment ? debtor?

(2) Whether the obstructionist proves that he is in possession of the suit premises as tenant of original owner ? Dahyagar Hiragar since year 1941?
(2.A) Whether Dahyagar Hiragar and/or any person claiming through him had any legal right to confer any other right to the obstructionist?
(3) Whether the decree holder is entitled for removal of obstruction as prayed?
(4) Whether such application is maintainable at law?
(5) Whether the application is barred by estoppel and res judicata?
(7) Whether the opponent is entitled to compensatory costs?
(8) What order?

(9) Whether the application Exh.156 is barred by the law of limitation? If yes, decree of C.S.No. 66 of 1963, can be executed against the present opponent.

(10) Whether notice under Order 21 Rule 22 of C.P. Code is properly issued and served on the opponent?

4. The parties produced voluminous documentary evidence consisting certified copies of judgments, decree, orders, etc. of previous litigations in respect of the property in question. Present appellant was examined vide Exh. 105. The oral evidence of present respondent Dhirajlal Laxmishankar Bhatt was

recorded vide Exh. 188. The respondent also examined original judgment creditor Dahyagar Hiragar as his witness. Both the parties also placed on record the written submissions on the issues.

5 After going through the evidence produced and after hearing both the parties, the learned Judge came to the findings of the issues as under :

1 In the negative

2 In the Affirmative

2-A Does not survive

3 In the negative

4 In the negative

5 In the negative

6 In the negative

7 As per final order

8 In the negative

9 In the negative

10 In the negative

6 The learned City Civil Judge vide order impugned, rejected the application of the present appellant for removal of the obstructions and as a consequence the possession warrant issued against the present respondent

for the property in question bearing Survey No. 2469 of Khadia Ward No.3 and Municipal Cession No. 1465/8 was held cancelled and hence this First Appeal by judgment creditor and applicant of Civil Misc. Application No. 293 of 1987 preferred in Execution Application No. 473 of 1980.

7 Modi Bachubhai Sankalchand appeared as a party-in-person and raised various contentions. It was contended that principle of res judicata is applicable in this case and the application and the contentions on behalf of the respondent that he has been a tenant is hit by res judicata. It is stated that Savitaben, wife of Dahyagar Hiragar, filed one Small Cause Suit bearing No. 596 of 1963 against the present respondent for the possession and rent under the Bombay Rent Act for the same property. In the said suit, respondent Dhirajlal Laxmishanker Bhatt also preferred one application for fixing the standard rent. In the said suit, vide decree passed on 28th of April 1966, it was held that Savitaben, wife of Dahyagar Hiragar was the owner and landlord of the premises. Dahyagar Hiragar was party to the above suit. The standard rent application preferred by respondent Dhirajlal Laxmishankar Bhatt and Small Cause Suit No. 596

of 1993 both were tried together. Though the decree of possession was not passed in favour of Savitaben in said Small Cause Suit, but she was declared landlord and appeal came to be preferred before the Bench of the Judges of the Small Causes Court by Dahyagar Hiragar and in the said Appeal, the judgment and decree passed in Small Cause Suit No. 596 of 1963 declaring savitaben as a landlord was reversed and Dahyagar Hiragar was declared landlord. Now party-in-person contends that though against the Small Cause Suit No. 596 of 1963, Appeal came to be preferred by Dahyagar Hiragar, but none preferred appeal against the judgment and order passed in respect of standard rent application, and that order became final, in which Savitaben was held landlord and, therefore, according to appellant party-in-person, the executing court ought not to have passed the order impugned as the matter was hit by res judicata as it was previously held in standard rent application that Savitaben was the landlord and Dahyagar Hiragar was not the landlord and none preferred appeal against this decision of standard rent application. Party-in-person also further stated that the executing court had no jurisdiction to declare Dhirajlal Laxmishankar Bhatt to be the tenant of the suit premises for the same reason

and, therefore, in fact the City Civil Court, Ahmedabad had no jurisdiction at all to declare that Dhirajlal Laximishankar Bhatt was tenant of Dahyagar Hiragar as Dahyagar Hiragar, as aforesaid, vide decision in Small Cause Suit No. 596 of 1963 was not held landlord of the premises. It is submitted that even after 28th of April, 1966 i.e. date of decree in Small Cause Suit No. 596 of 1963, Dahyagar Hiragar continued to issue rent receipts but he had no such authority to issue rent receipts to the respondent as he was not declared landlord by Small Cause Court in decree passed in Small Cause Suit No. 596 of 1963. It was further contended that therefore he filed an application before the Trial Court to add issue No.2-A as to whether Dahyagar Hiragar and any person claiming through him had any legal right to confer any other right to the obstructionists i.e. present respondent. It is submitted that the learned Judge, however, did not consider this issue but replied that the same was surviving. It is submitted that with reference to the decree passed in Small Cause Suit No. 596 of 1963, this issue was sought to be framed.

8 It was further submitted by the appellant - party-in-person that to decide tenancy, there must be a rent

receipt or contract of tenancy. The respondent has not produced any rent receipt before 1963. It is submitted that vide Exh. 193 one receipt is produced before 1963, but the same is vague and it is not certain that the same pertains to the present property as Exh. 193 does not show description of the property or anything to denote that the receipt pertains to the suit property. It is further submitted that it is an admitted fact that on 23rd of March, 1949, Dahyagar Hiragar leased the present property to defendants No. 1 and 2 of Civil Suit No. 66 of 1963 and transferred his right to recover rent. Even though, during this period of lease, Dahyagar Hiragar has unauthorizedly issued rent receipts which ought not to have been taken into consideration by the learned City Civil Judge.

9 In respect of Exh. 246 which is a diary containing receipts of rent in favour of the present respondent as given by Dahyagar Hiragar right from 29th of June, 1941 upto 1947. It was contended that in his deposition Dahyagar Hiragar submitted that he had given printed receipts while Exh. 246 are not printed receipts and in view of this contradiction, no reliance can be placed upon Exhibit 246. It was submitted that since the

property was purchased by the appellant in pursuance of agreement to sale, the relationship between the appellant and Dahyagar Hiragar were strained and due to this enmity to favour the respondent Dhirajlal Laxmishankar Bhatt became witness and stated in favour of the respondent. It is stated that therefore there is no iota of evidence to denote that the said property was given to the present respondent by Dahyagar Hiragar on rent. It is submitted that in this application to prove tenancy, none of neighbours of respondent was examined. It is submitted that the other documents which are produced on record like ration card, etc. pertains to the period after 1963 and not before that and after 1963, according to party-in- person, Dahyagar Hiragar had no authority to issue rent receipts or anything. The receipts which are issued by the appellant are issued as a receiver after serving a notice that if the occupants are tenants, then, they should pay rent to the receiver or if they are occupants otherwise then tenant should pay mesne profit to the receiver i.e. present appellant. It is, therefore, submitted that the receipts issued by the present appellant to the respondent are receipts for occupation and cannot be termed as a rent receipt. It is submitted that the decree is passed in Civil Suit No. 66 of 1963

against the property and not against the person and therefore the possession warrant is executable and learned City Civil Judge did not take this issue into consideration. In short, it was submitted that there are no receipts of the rents during the period from 1941 to 1963 and whatever is produced for this period, cannot be termed as rent receipts pertaining to the property in question, and after 1963, Dahyagar had no authority to issue any rent receipts as he was not held landlord in Small Case Suit No. 66 of 1963. Therefore, it is submitted that the decree passed in Civil Suit No. 66 of 1963 is binding upon the respondent and since his occupation is through defendants of the said suit, the decree is binding upon the respondent. It is submitted that the Executing Court cannot go behind the decree and come to the conclusion that the obstructor was a tenant. It is, therefore, submitted that this appeal be allowed the order impugned in this First Appeal be set aside and execution of warrant for possession against the present respondent be permitted.

10 As against this, learned Advocate Mr. K.V. Shelat for the respondent submitted that the premises in question i.e. Municipal Census No. 1465/8 i.e. Survey No. 2469 was

let by Dahyagar Hiragar to the present respondent. It was submitted that this property originally owned by Bai Jadavben, mother of Dahyagar Hiragar, who died in 1940. My attention was drawn to the judgment of Civil Suit No. 66 of 1963, which is produced on record at Exhibit ? 106 wherein the present respondent Dhirajlal Laxmishankar Bhatt was examined as witness at Exh. 327 as a witness of Dahyagar Hiragar, who stated that he was tenant of Dahyagar Hiragar. My attention was also drawn to Exhibit-246 i.e. diary of rent receipt issued by Dahyagar Hiragar to the respondent. The first receipt, according to Mr. Shealt, is dated 29th of October, 1941 denoting that right from 1941, the respondent was tenant in the suit premises. It was submitted that this diary was produced in Civil Suit No. 66 of 1963 and was proved and relied upon. It was submitted that from that suit through a witness i.e. court clerk, this evidence was produced in this obstruction application. It is submitted that thereafter also a Receipt at Exh. 193 is also produced to prove the tenancy and it cannot be said that the said receipt is also fabricated as Receipt Exh. 193 was also produced in the said Civil Suit No. 66 of 1963. He also draw the attention of this Court to other rent receipts issued by Dahyagar Hiragar at Exh. 164. it is submitted

that at Exh. 108 onwards are the receipts from 04th of May, 1968 not only issued by Dahyagar Hiragar, but issued by the present appellant as well, on the basis of banakat ? agreement to sell entered into between the parties. It is submitted that sale deed, copy of which, placed at Exh. 152 executed between Dahyagar Hiragar at one side as seller and present appellant Modi Bachubhai, his wife Laxmiben and his son etc as joint purchaser, on 30th of November, 1973 registered on 3rd of December, 1973 acknowledges present respondent as tenant of the suit premises by attornment for the property bearing Survey No. 2469 i.e. subject matter of the appeal. It is submitted that there cannot be any better evidence than this registered sale deed indicating that the present respondent is tenant of the premises and without due process of law as prescribed under the Rent Act, no possession under any decree be executed against tenant respondent. He submitted that Dahyagar Hiragar in his deposition clearly stated that respondent was a tenant and there is no cross-examination on this aspect. My attention was drawn to various rent receipts issued by Dahyagar Hiragar, present appellant and Bai Laxmiben. They are at Exhibits 111 to 122, Exhibits 125 to 149. It is submitted that even if we peruse the decree passed in

Civil Suit No. 66 of 1963, it is against the occupants who are unauthorized, while the present respondent was tenant in the suit premises during proceeding of Civil Suit No. 66 of 1963, and that is evident from the judgment itself and, therefore, also this decree cannot be executed against the present respondent. It is submitted that the judgment and order impugned in this appeal is reasoned order and requires no interference in this First Appeal.

11 Having heard both the sides at length and having gone though the voluminous record carefully and the evidence produced, it appears that short question in substance arises to be decided as to whether a possession warrant against the present respondent for the property in question can be issued in execution of a decree of Civil Suit No. 66 of 1963.

12 I have gone through the evidence and each exhibits independently and evaluated the contentions carefully.

13 Going through the decree passed in Civil Suit No. 66 of 1963, it is undoubtedly clear that Dahyagar Hiragar was declared owner of the suit properties of which the

present property in question was part and parcel. It was further declared that defendants No. 3 and 4 of the said suit i.e. wife of Dahyagar Hiragar and son of Dahyagar Hiragar had no right, title or interest in the property. It was directed that the names of the defendants No.3 and 4 entered into assessment registers of municipal records were liable to be deleted. Same way, the defendant Nos. 5 and 6 Bai Diwaliben, wife of Modi Ranchhodbhai defendant No.1 and defendant No.6 present appellant also had no right, title or interest in the property. It was directed that defendants No. 1 to 6 were liable to hand over the possession of property or any part of it to the plaintiff Dahyagar Hiragar.

14 It is noteworthy that the present appellant was defendant No.6 in the said suit. Decree came to be passed in the said suit by City Civil Court, Ahmedabad, on 30th of November, 1967. Thus, by the decree Dahyagar Hiragar was declared to be sole owner of the suit property and was capable of transferring the suit property in any manner, as till Supreme Court, the said decree had become final. Thereafter, in pursuance of one banakath dated 29th of April, 1964, the present appellant along with his wife and son jointly became the owner of the property in

question, vide registered Sale Deed dated 03rd of December, 1973.

15 It is on the record that with the judgment and decree passed by the City Civil Court, Ahmedabad, and in Civil Suit No. 66 of 1963, all the pending suits were decided accordingly and a judgment and decree passed in HRP Suit No. 596 of 1963 in favour of Bai Savitaben also was reversed in appeal. Meaning thereby that in the said Small Cause Suit also Dahyagar Hiragar was declared landlord and, therefore, the argument in respect of res judicata as well as jurisdiction, on this strength, as above said, is totally misconceived, as only because no appeal came to be preferred in standard rent application, the declaration by the court competent as to the ownership of the suit property belonging to Dahyagar Hiragar cannot be affected at all. There is no room for the contentions that Dahyagar Hiragar was not in actual possession of the suit property but the defendants therein were in possession and hence present respondent was in possession through such defendants and therefore Dahyagar amended the plaint and prayed for the relief of possession from the defendant. With the change of fact and circumstances of each case plaintiff is entitled to

mould relief if law permits, and in the present case, law did permit that in a suit for declaration, the plaintiff was entitled to pray for the relief of possession from unauthorized occupants, but on that strength, it cannot be said by any stretch of reasoning that the present respondent was in possession through the defendants of Civil Suit No. 66 of 1963 as it was established that he was tenant of Dahyagar and as such he deposed and learned City Civil Judge placed reliance on such deposition.

16 Only because of enmity, Dahyagar Hiragar deposed against the present appellant and, therefore, his deposition should be discarded, is a contention far fetched from the evidence on record. It is not only the deposition of Dahyagar, but the voluminous evidence in shape of decrees of the court, in shape of receipts issued by various persons and by documentary evidence, it is proved by the respondent that he was not only in possession and occupation of the premises, but was lawful tenant of the premises. It would not at all be proper to refer to HRP Small Cause Suit between Bai Savitaben and other persons including Dahyagar Hiragar and present respondent, as the matter ends with the decree passed in Civil Suit No. 66 of 1963 and the judgment in HRP Suit

was reversed in appeal.

17 When we peruse evidence, it becomes clear that the present respondent was occupying the property in question as a tenant even before the filing o the Civil Suit No. 66 of 1963. Rent receipts produced at Exh. 246 and 183 are the receipts issued by Dahyagar Hiragar on 29th of June, 1941, 29th of August, 1941 and 19th of May, 1949. These receipts at Exh. 246 and 183 both are duly proved in proceedings in Civil Suit No. 66 of 1963 wherein the present appellant was also defendant No.6. These receipts cannot be discarded on flimsy ground that they do not pertain to the suit property. Such receipts cannot be discarded merely because Dahyagar deposed that they were in printed form and in fact they are hand written. Those documents are well substantiated by the deposition of Dahyagar in Civil Suit No. 66 of 1963 as well as in the present proceedings.

18 Above all the best evidence which could not at all be denied by the present appellant is a registered document dated 3rd of December, 1973 between Dahyagar and appellant, his wife and his son about the sale of the

present property in question wherein it has been made clear that in the present property, the present respondent was a tenant and, therefore, he became tenant of the present appellant by attornment. Nothing could be said against this registered documents. By this registered sale deed, a previous tenant of the premises is acknowledged as his tenant by the purchaser and who is none else but the present appellant and, therefore in whatever capacity, be a receiver or a owner, possession of the property in question, cannot be taken from the respondent tenant in any manner even in the pretext of executing a decree of Civil Suit No. 66 of 1963. Above all, from going through the record it becomes clear that by decree passed in Civil Suit No. 66 of 1963, which became final upto Supreme Court, Dahyagar was held the owner of the suit premises and vide above sale deed it has been admitted by Dahyagar that the respondent was the tenant in the suit premises and said admission was acknowledged by attornment by the appellant, and now the appellant is in fact estopped from taking possession of the suit premises from respondent No.2 on the say that respondent was in possession through defendants of Civil Suit No. 66 of 1963 and except due process of law as envisaged by the Bombay Rent Act.

19 Though the documentary evidence as referred above is produced by the respondent obstructor in the proceedings of the court below and as above said, receipts Exhibits 246 and 183 are duly proved and occupation as tenant of respondent is well proved right from 1941, but in addition to that, this fact of tenancy is further proved by registered document as referred above to which the present appellant cannot be heard to say that the present respondent was not the tenant of Dahyagar Hiragar and was in unauthorized occupation so as to be liable to be evicted in the execution application in pursuance of the decree passed in Civil Suit No. 66 of 1963.

20 It is worthy to note here that basically the contentions to issue possession warrant against the present respondent was based upon the say of the present appellant that the present respondent was in unauthorized occupation of the suit premises through defendants of Civil Suit No. 66 of 1963. I have gone through carefully through out the record of this court as well as of the trial court, but there is no iota of evidence to substantiate this contention of the appellant. It may be that the appellant was relying upon the decision of HRP Small Cause Suit decision which was reversed in appeal

and in favour of Dahyagar Hiragar. On the contrary, voluminous reliable evidence is found from the record in favour of the respondent to the extent that even before the present appellant along with his family members purchased the property, was the tenant of the premises in question and also continued to be tenant of purchaser i.e. appellant thereafter.

21 With the passing of the decree in Civil Suit No. 66 of 1963 the contention that in past there were suits under the Bombay Rent Act, in those suits, Bai Savitaben was held owner and landlord of the property, becomes infructuous. In my humble view, those are not the relevant facts to decide the present controversy. The present controversy is whether the respondent is entitled to obstruct the execution of decree passed in Civil Suit No. 66 of 1963 on contention that he was tenant. In my humble view, the only evidence of registered sale deed between Dahyagar Hiragar and appellant and his family members is sufficient to decide that the respondent was the tenant of the suit premises and cannot be evicted in execution of decree of Civil Suit No. 66 of 1963 even not considering for limited purpose whether any such effective decree is said to have been passed against the

respondent.

22 Question that whether Dahyagar Hiragar was authorized or not authorized to issue rent receipts and, therefore Issue No. 2(a) was framed and not decided correctly by the court below, has no relevance at all in view of what is stated above. It is as simply as that by a decree of competent court, Dahyagar Hiragar was declared as sole owner of the property in question and before selling the property he admitted the present respondent Dhirajlal Laxmishankar Bhatt to be tenant in the part of the said property, and in turn, the present appellant vide the above said registered deed, acknowledged the tenancy of the present respondent and, therefore, the decree passed in Civil Suit No. 66 of 1963, cannot be executed against the present respondent tenant.

23 In this view of matter though I completely and fully endorse the reasons assigned by the learned City Civil Judge for dismissing the application and thereby though no detailed reasons are required to be recorded for deciding this Appeal, but for the contentions raised, for the foregoing reasons, this Appeal must fail and be dismissed.

24 In the result, this Appeal is dismissed. The judgment and order impugned in this Appeal is confirmed. The appellant shall bear his own costs as well as the cost of the respondent so far as this appeal is concerned.

(J.R.VORA, J.)

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